

3255

2013-2014 Regular Sessions

I N A S S E M B L Y

January 24, 2013

Introduced by M. of A. CLARK, SIMOTAS, JAFFEE -- Multi-Sponsored by --
M. of A. ENGLEBRIGHT, GOTTFRIED -- read once and referred to the
Committee on Codes

AN ACT to amend the penal law, in relation to community guns and the
criminal sale of a firearm in the first and third degrees

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 115.00 of the penal law, as amended by chapter 422
2 of the laws of 1978, is amended to read as follows:
3 S 115.00 Criminal facilitation in the fourth degree.
4 A person is guilty of criminal facilitation in the fourth degree
5 when[,]:
6 1. believing it probable that he OR SHE is rendering aid:
7 [1.] A. to a person who intends to commit a crime, he OR SHE engages
8 in conduct which provides such person with means or opportunity for the
9 commission thereof and which in fact aids such person to commit a felo-
10 ny; or
11 [2.] B. to a person under sixteen years of age who intends to engage
12 in conduct which would constitute a crime, he OR SHE, being over eigh-
13 teen years of age, engages in conduct which provides such person with
14 means or opportunity for the commission thereof and which in fact aids
15 such person to commit a crime; OR
16 2. HE OR SHE BEING NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO
17 POSSESS A FIREARM SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR
18 DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY,
19 AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON TO COMMIT A FELONY, INCLUD-
20 ING, BUT NOT LIMITED TO, A FELONY SET FORTH IN ARTICLE TWO HUNDRED
21 SIXTY-FIVE OF THIS PART; OR
22 3. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED
23 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES
24 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT
2 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CRIME, INCLUDING,
3 BUT NOT LIMITED TO, A CRIME SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE
4 OF THIS PART.

5 Criminal facilitation in the fourth degree is a class A misdemeanor.

6 S 2. Section 115.01 of the penal law, as added by chapter 422 of the
7 laws of 1978, is amended to read as follows:

8 S 115.01 Criminal facilitation in the third degree.

9 A person IS guilty of criminal facilitation in the third degree, when:

10 1. believing it probable that he OR SHE is rendering aid to a person
11 under sixteen years of age who intends to engage in conduct that would
12 constitute a felony, he OR SHE, being over eighteen years of age,
13 engages in conduct which provides such person with means or opportunity
14 for the commission thereof and which in fact aids such person to commit
15 a felony; OR

16 2. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED
17 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES
18 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR
19 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT
20 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A FELONY, INCLUDING,
21 BUT NOT LIMITED TO, A FELONY SET FORTH IN ARTICLE TWO HUNDRED SIXTY-FIVE
22 OF THIS PART.

23 Criminal facilitation in the third degree is a class E felony.

24 S 3. Section 115.05 of the penal law, as amended by chapter 422 of the
25 laws of 1978, is amended to read as follows:

26 S 115.05 Criminal facilitation in the second degree.

27 A person is guilty of criminal facilitation in the second degree
28 when[,]:

29 1. believing it probable that he OR SHE is rendering aid to a person
30 who intends to commit a class A felony, he OR SHE engages in conduct
31 which provides such person with means or opportunity for the commission
32 thereof and which in fact aids such person to commit such class A
33 felony; OR

34 2. HE OR SHE BEING NOT AUTHORIZED PURSUANT TO NEW YORK STATE LAW TO
35 POSSESS A FIREARM SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES OR
36 DISPOSES OF A COMMUNITY GUN, OR ASSISTS ANY PERSON IN ANY SUCH ACTIVITY,
37 AND SUCH COMMUNITY GUN IN FACT AIDS A PERSON TO COMMIT A CLASS A FELONY.

38 Criminal facilitation in the second degree is a class C felony.

39 S 4. Section 115.08 of the penal law, as added by chapter 422 of the
40 laws of 1978, is amended to read as follows:

41 S 115.08 Criminal facilitation in the first degree.

42 A person is guilty of criminal facilitation in the first degree
43 when[,]:

44 1. believing it probable that he OR SHE is rendering aid to a person
45 under sixteen years of age who intends to engage in conduct that would
46 constitute a class A felony, he OR SHE, being over eighteen years of
47 age, engages in conduct which provides such person with means or oppor-
48 tunity for the commission thereof and which in fact aids such person to
49 commit such a class A felony; OR

50 2. HE OR SHE, BEING OVER EIGHTEEN YEARS OF AGE AND NOT AUTHORIZED
51 PURSUANT TO NEW YORK STATE LAW TO POSSESS A FIREARM, SHARES, MAKES
52 AVAILABLE, SELLS, EXCHANGES, GIVES OR DISPOSES OF A COMMUNITY GUN, OR
53 ASSISTS ANY PERSON IN ANY SUCH ACTIVITY, AND SUCH COMMUNITY GUN IN FACT
54 AIDS A PERSON UNDER SIXTEEN YEARS OF AGE TO COMMIT A CLASS A FELONY.

55 Criminal facilitation in the first degree is a class B felony.

56 S 5. Section 115.15 of the penal law is amended to read as follows:

1 S 115.15 Criminal facilitation; corroboration.

2 A person shall not be convicted of criminal facilitation upon the
3 testimony of a person who has committed the felony charged to have been
4 facilitated unless such testimony be corroborated by such other evidence
5 as tends to connect the defendant with such facilitation; PROVIDED THAT
6 THIS SECTION SHALL NOT APPLY TO A CONVICTION OF CRIMINAL FACILITATION
7 FOR SHARING, MAKING AVAILABLE, SELLING, EXCHANGING, GIVING OR DISPOSING
8 OF A COMMUNITY GUN, OR ASSISTING ANY PERSON IN SUCH ACTIVITY.

9 S 6. The penal law is amended by adding a new section 115.20 to read
10 as follows:

11 S 115.20 CRIMINAL FACILITATION; DEFINITIONS AND CONSTRUCTION.

12 AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING
13 MEANINGS:

14 1. "COMMUNITY GUN" SHALL MEAN A FIREARM THAT IS SHARED, MADE AVAIL-
15 ABLE, SOLD, EXCHANGED, GIVEN OR DISPOSED OF AMONG OR BETWEEN TWO OR MORE
16 PERSONS, AT LEAST ONE OF WHOM IS NOT AUTHORIZED PURSUANT TO LAW TO
17 POSSESS A FIREARM.

18 2. "DISPOSE OF" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION
19 265.00 OF THIS PART.

20 3. "SHARE" AND "MAKE AVAILABLE" SHALL, IN THE CASE OF A FIREARM, BE
21 CONSTRUED TO INCLUDE, BUT SHALL NOT BE LIMITED TO, PLACING SUCH FIREARM
22 AT A LOCATION ACCESSIBLE AND KNOWN TO ONE OR MORE OTHER PERSONS.

23 S 7. Section 265.00 of the penal law is amended by adding a new subdi-
24 vision 25 to read as follows:

25 25. "COMMUNITY GUN" SHALL HAVE THE DEFINITION SET FORTH IN SECTION
26 115.20 OF THIS PART, AND THE TERMS "SHARE" AND "MAKE AVAILABLE" SHALL BE
27 CONSTRUED AS SET FORTH IN SUCH SECTION.

28 S 8. Section 265.11 of the penal law, as amended by chapter 764 of the
29 laws of 2005, is amended to read as follows:

30 S 265.11 Criminal sale of a firearm in the third degree.

31 A person is guilty of criminal sale of a firearm in the third degree
32 when such person is not authorized pursuant to law to possess a firearm
33 and such person unlawfully either:

34 (1) sells, exchanges, gives or disposes of a firearm or large capacity
35 ammunition feeding device to another person; [or]

36 (2) possesses a firearm with the intent to sell it; OR

37 (3) SHARE OR MAKES AVAILABLE A COMMUNITY GUN.

38 Criminal sale of a firearm in the third degree is a class D felony.

39 S 9. Section 265.13 of the penal law, as amended by chapter 764 of the
40 laws of 2005, is amended to read as follows:

41 S 265.13 Criminal sale of a firearm in the first degree.

42 A person is guilty of criminal sale of a firearm in the first degree
43 when such person:

44 (1) unlawfully sells, exchanges, gives or disposes of to another ten
45 or more firearms; [or]

46 (2) unlawfully sells, exchanges, gives or disposes of to another
47 person or persons a total of ten or more firearms in a period of not
48 more than one year; OR

49 (3) BEING NOT AUTHORIZED BY NEW YORK STATE LAW TO POSSESS A FIREARM
50 UNLAWFULLY SHARES, MAKES AVAILABLE, SELLS, EXCHANGES, GIVES, OR DISPOSES
51 OF A FIREARM TO ANOTHER PERSON, AND, WITHIN THREE YEARS THEREAFTER, THE
52 FIREARM IS DISCHARGED AND CAUSES THE DEATH OF ANOTHER PERSON. THE
53 PROVISIONS OF THIS SUBDIVISION SHALL ONLY APPLY WHEN SUCH FIREARM WAS
54 DISCHARGED INTENTIONALLY, RECKLESSLY OR WITH CRIMINAL NEGLIGENCE,
55 PROVIDED THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY WHEN
56 SUCH FIREARM WAS DISCHARGED INTENTIONALLY FOR PURPOSES OF COMMITTING

1 SUICIDE. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "FIREARM" SHALL
2 INCLUDE BUT NOT BE LIMITED TO A COMMUNITY GUN.
3 Criminal sale of a firearm in the first degree is a class B felony.
4 S 10. This act shall take effect on the one hundred eightieth day
5 after it shall have become a law.